

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

THE FARMERS AND TRADERS
BANK OF MT. OLIVET, INCORPORATED

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -5066

Decision No. CU 1679

Counsel for Claimant:

G. A. Famularo, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$1,769.75, was presented by THE FARMERS AND TRADERS BANK OF MT. OLIVET, INCORPORATED, and is based on its interest in a bond issued by the Guantanamo and Western Railroad Company.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government

of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1) of the Act defines the term "national of the United States" as "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

An officer of the claimant corporation has certified that the claimant was organized in the State of Kentucky and that at all times pertinent to this claim 100% of the outstanding stock has been owned by nationals of the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1) (B) of the Act.

On the basis of the evidence of record, the Commission finds that claimant is, and since prior to October 13, 1960, has been the owner of one bond, in the original face amount of \$5,000.00, issued by the Guantanamo and Western Railroad Company, and known as a "First Mortgage Bond, 4%, Series A, due June 30, 1970", issued under an Indenture of January 1, 1928 and Supplemental Indentures of January 1, 1952 and October 1, 1959, with the Irving Trust Company of New York as Successor Trustee. The bond in question is No. RV 15.

The Guantanamo and Western Company was organized in the State of Maine; however, 90.19% of its outstanding capital stock was owned by Consolidated Railroads of Cuba, a Cuban corporation. Guantanamo and Western Railroad Company, therefore, does not qualify as a national of the United States under the definition contained in Section 502(1) of the Act, (supra).

The Guantanamo and Western Railroad Company, by Indenture dated January 1, 1928, issued bonds known as "First Mortgage Bonds, 6%, Series A, due January 1, 1958". Thereafter, by Supplemental Indenture dated January 1, 1952, these bonds were reissued as "First Mortgage Bonds, 4%, Series A, due July 30, 1970". As of 1952, no payment had been made against the face amount of the bonds. A second Supplemental Indenture, dated October 31, 1959, pro-

vided for the issuance for registered bonds, but made no change in the maturity date or interest rate to be paid thereon.

The record discloses that the last payment of interest on the bond was made on January 1, 1959, and the face amount of the bond was never reduced by a payment against principal. The properties of the Guantanamo and Western Railroad Company were listed as nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Claimant's bond, therefore, represented a debt which was a charge upon nationalized property, as defined in Section 502(3) of the Act.

The Commission concludes that as a result of the nationalization of the properties of the Guantanamo and Western Railroad Company, claimant suffered a loss in connection with its bond, within the meaning of Title V of the Act. (See Claim of Olive L. Fair, Claim No. CU-8104).

The Commission finds that the amount of the unpaid indebtedness on claimant's bond on October 13, 1960, the date of loss was \$5,356.80 including the principal amount of \$5,000.00 and the interest due on the bond from January 1, 1959 to October 13, 1960 in the amount of \$356.80.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

The Commission has decided that in certification of losses on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date of loss, to the date on which provisions are made for settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that THE FARMERS AND TRADERS BANK OF MT. OLIVE, INCORPORATED suffered a loss, as a result of action of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Five Thousand Three Hundred Fifty Six Dollars and Eighty Cents (\$5,356.80) with interest thereon at 6% per annum from October 13, 1960 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Proposed
Decision of the Commission

APR 10 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

CERTIFICATION

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision on MAY 17 1968

Francis Thacker

Clerk of the Commission

NOTICE TO TREASURY DEPARTMENT: The bond subject of this certification of loss may have been returned and no payment should be made until it is resubmitted.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)